ORIGINAL

Before The
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of Sections	)	
of the Television Consumer	)	MM Docket No. 92-266
Protection and Competition	)	
Act of 1992	)	
	)	
Rate Regulation	)	

To: The Commission

COMMENTS ON PETITIONS FOR RECONSIDERATION

Providence Journal Company ("PJC"), hereby submits its comments in response to Petitions for Reconsideration of the Commission's Sixth Order on Reconsideration, Fifth Report and Order, and Seventh Notice of Proposed Rulemaking, FCC 94-286 (released November 18, 1994) ("Going Forward" decision).[1] PJC shares the concern expressed by Petitioners who point out that the history of the Commission's evolving policies, rules, and rulings regarding the regulatory status of packaged a la carte services has created confusion and uncertainties among both cable operators and programmers and has resulted in inconsistent and inequitable treatment of essentially similarly situated cable operators. Accordingly, PJC urges the Commission to adopt a

[1] Providence Journal Company conducts its cable television operations through Colony Communications, Inc., King Videocable Company, Colony Cablevision and Copley/Colony, Inc.

bright-line rule that would allow all cable operators to create a package of a small number of channels from regulated tiers as an unregulated New Product Tier.

In its initial Rate Order the Commission acknowledged that there are substantial public policy reasons which support the collective offering of unregulated a la carte programming services.[2] The Commission's first policy pronouncement on this subject instructed that the regulatory treatment of such packages would be determined by a two part test: whether the package price is less than the sum of the individual services and whether the subscriber is afforded a realistic choice between the package and its individual components.[3] Subsequently, in the Second Recon. Order, the Commission reaffirmed its view that collective offerings could serve the public interest; additionally, the Commission expanded the test by which such packages would be judged to include 15 factors.[4] These guidelines were intended to enable cable operators to more easily determine what constitutes a realistic service offering. The Commission's most recent declaration on collective offerings is contained in its Going Forward decision.[5] There the Commission reversed the policy position it had taken in all prior rulemaking

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[2] Report and Order and Further Notice of Proposed Rulemaking, MM Docket No. 92-266, 8 FCC Rcd 5631, 5837-38, ¶ 329 (1993) ("Rate Order").

[3] Rate Order at 5836-37, ¶ 327-28.

[4] Second Order on Reconsideration, Fourth Report and Order and Fifth Notice of Proposed Rulemaking, MM Docket No. 92-266, 9 FCC Rcd 4119, 4212-14, ¶ 194-96 (1994) ("Second Recon. Order").

[5] Sixth Order on Reconsideration, Fifth Report and Order and Seventh Notice of Proposed Rulemaking, MM Docket No. 92-266, ____ FCC Rcd ____ (November 18, 1994) ("Going Forward" decision).

proceedings and concluded that all collective packages of cable programming, including services that would otherwise be unregulated on a stand-alone basis, are subject to rate regulation. The Going Forward decision also established a category of cable programming service tier - the New Product Tier - which would not be regulated provided certain conditions are met. PJC commends the Commission for its efforts to stimulate and provide incentives for the addition of new programming; those efforts will benefit consumers, programmers and cable operators.

Following the issuance of these evolving, and indeed contradictory, policy statements, the Commission began a series of rulings on pending a la carte Letters of Inquiry which had been addressed to a number of cable operators. In those rulings the Commission has forthrightly acknowledged that its prior pronouncements may not have provided sufficient guidance to cable operators, and in many cases has concluded that while a particular operator's a la carte package may not have clearly met the criteria established in the Rate Order or the Second Recon. Order, it would be inequitable to treat that package as a regulated tier.[6]

An examination of the fact patterns in those decisions reveals a wide variety among operators' a la carte packages. Some consisted of "mini-tiers" of services which had never been offered on widely distributed basic or expanded basic tiers,

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[6] See, e.g. Comcast Cablevision (Tallahassee), LOI-93-2, DA 94-1275 (November 18, 1994); Century Cable TV (Muncie), LOI-93-18, DA 94-1354 (December 2, 1994); MultiVision Cable TV (Prince George's County), LOI-93-15, DA 94-1352 (December 2, 1994).

which had been affirmatively marketed to subscribers, which had achieved relatively low penetration, and which were converted to a la carte packages on or before the September 1, 1993 effective date of rate regulation. Others were made up of services migrated from basic or expanded basic tiers, were not affirmatively marketed prior to their conversion to a la carte packages on the effective date of regulation and had virtually 100% penetration. The Commission's treatment of these packages has likewise varied. For example, the Commission has permitted the migration of six channels from 31 channels previously offered on an operator's second and third tiers of service to a la carte status to be treated as a New Product Tier.[7] In another case the Commission concluded that the operator's conversion of 5 or 6 channels from a 5 or 6 channel third level tier to an a la carte package would likewise be acceptable as a New Product Tier.[8] Yet in a third case, however, the Commission ruled that the migration of four channels from an operator's first and second tiers and the conversion of a four channel third tier to two separate a la carte packages was improper because it eliminated an entire cable programming service tier.[9]

A careful review of the Commission's a la carte Letter of Inquiry decisions demonstrates the difficulty in harmonizing these rulings and the reasoning used to reach

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[7] Century Cable TV (Brunswick), LOI-93-44, DA 94-1426 (December 12, 1994).

[8] Nashoba Cable Services (Danvers), LOI-93-23, DA 94-1547 (December 22, 1994).

[9] Vision Cable of North Carolina, Inc. (Charlotte), LOI-93-24, DA 94-1552 (December 22, 1994).

them. The apparent lack of consistency among these rulings is understandable given the Commission's immense administrative burden of applying its rate rules in literally thousands of rate cases with different fact patterns or diffierent combinations of service offerings. In short, however, there is no unifying thread among those decisions and further clarification is needed.

As the Commission is well aware, the appropriate regulatory treatment of a la carte packages remains an issue in many pending CPS complaints before the FCC as well as in local rate proceedings and appeals to the Commission. Thus the a la carte issue will not finally be put to rest simply by the Commission's LOI rulings and Going Forward decision; it will have to be addressed many more times in many more individual cases. In view of the manifestly evident difficulties in reconciling the precedents established thus far, the Commission should further clarify its position on a la carte packages. This desirable result can be accomplished quite simply by declaring that operators shall have a one-time opportunity to migrate from a regulated tier or tiers, or to convert from an established regulated tier, a small number of channels to an unregulated New Product Tier. This bright-line standard would eliminate inconsistencies and inequities among essentially similarly situated operators and would

bring efficiencies and economies to the rate regulation process by adopting a clear and easy to apply rule. Accordingly, PJC urges its adoption.

Respectfully submitted,

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